IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL REVISION APPLICATION NO.419 OF 2007

Hirji D Kawathe
and others. : Petitioners.

versus

Shri Rajdeo Bhagelu Patel : Respondent.

Mr.S.B.Deshpande for the petitioners.
Mr.Sunil Singh for the respondent.

CORAM : S.A.BOBDE, J.

DATED : OCTOBER 05, 2007.

ORAL ORDER :-

1. Rule, returnable forthwith. Taken up for final hearing by consent of the parties. Heard.

2. This revision application is preferred by the landlord against the dismissal of his suit for eviction by the appellate Court. The appellate Court has reversed the findings of the

trial Court and held that the petitioner is not entitled for possession of the suit premises which comprise of one room in which the respondent and his son are residing.

3. The learned counsel for the petitioners submitted that the appellate Court has committed a serious error of law apparent on the face of the record by dismissing the petitioners' suit on the basis of a concession only made by the petitioners' advocate. The concession is that during pendency of the suit, three rooms were constructed on the upper floor of the suit premises by the petitioner-landlord. The learned counsel for the petitioner relies upon the judgment of the Supreme Court in the case of **Shri Swami Krishnanand Govindanand v/s. M/s.M.D.Oswal Hosiery reported in AIR 2002 SC 1162** in which the Supreme Court has observed that a statement made by an advocate contrary to the written statement of the party he is representing cannot be accepted as an admission of the party and the decree cannot be passed thereon. In that case, Their Lordships, therefore, reversed the order of the Additional Rent Controller which recorded satisfaction on the basis of advocate's

statement.

4. The aforesaid judgment however has no application to the present case. In this case, though the appellate Court has referred to the statement made by the advocate for the petitioner fairly accepting that the petitioner has constructed three rooms during pendency of the suit. The statement is accepted, because it is in accordance with the evidence in the case. It is not a statement of an advocate made contrary to the written statement of the party he is representing. Further Para 5 of the judgment of the appellate Court shows that the appellate Court has not decided the matter only on the basis of the advocate's concession. The appellate Court has observed as follows :-

> "Having regard to all above admitted facts the entire evidence that has been produced before the Court will have to analyse in its proper perspective and context"

and thereupon decided the matter on the basis of

evidence.

5. It must be, therefore, held that though the statement made by an advocate contrary to the stand of his litigant he is representing cannot become the basis of a satisfaction which the Court is called upon to record, a statement which fairly accepts the true position emerging from the evidence on record can certainly be acted upon by the Court when corroborated by the evidence.

6. It was next submitted by the learned counsel for the petitioner that the judgment of the appellate Court dismissing the petitioner's suit is illegal, because it appears from the evidence on record that the respondent did not make any effort to obtain alternate accommodation upon receiving notice. According to the petitioner, there is no finding of comparative hardship and the judgment is, therefore, vitiated.

7. It is not possible to accept this contention on the facts of the present case. The

finding of comparative hardship is based on the fact that the petitioner-landlord is in possession of three rooms in all; two in one building on top of each other and one adjacent. The members of petitioner's family are four brothers. On the other hand, the respondent is residing in one room with his son. The assessment of the comparative hardship by the appellate Court does not suffer from any error of law apparent on the face of the record. There is no merit in this revision application. The same is dismissed. Rule is discharged.

[S.A.BOBDE,J]